

¹See K.S.A. 1998 Supp. 44-505(a)(3).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

Courtney J. Cowel testified he commenced working as a construction contractor in March, 1999. He hired claimant on August 12, 1999, as a laborer to help him complete some of his construction projects. Mr. Cowel testified he hired claimant at \$8.50 per hour but did not tell claimant he would work 50 hours per week. Claimant worked with Mr. Cowel building a deck onto a mobile home for four days from August 12, 1999, through August 16, 1999. On August 16, 1999, at 2:30 p.m., claimant was a passenger in a vehicle driven by Mr. Cowel when the vehicle rolled over and the claimant was seriously injured.

The single issue on appeal is whether the employer, Courtney J. Cowel, had a reasonable expectation not to have a gross annual payroll for the 1999 calendar year of more than \$20,000. Mr. Cowel testified he did not start his construction business until March, 1999. Accordingly, since Mr. Cowel did not start his business until 1999, he did not have a payroll for the 1998 calendar year. Thus, the parties would not be covered by the Act if Mr. Cowel reasonably estimated that his total gross payroll for the 1999 calendar year would not be more than \$20,000 for all of his employees.²

Claimant testified that before the accident he had worked ten hours per day. But he also testified he had received \$170 for the five days he had worked which would indicate he only worked an average of four hours per day instead of ten hours per day.

Further, Mr. Cowel testified, before he hired claimant, he had employed only two other workers in 1999. He had paid those employees \$660 each. In addition to the \$170 that claimant had earned before his August 16, 1999, accident, Mr. Cowel estimated that claimant would have earned for the balance of the 1999 year an average of \$200 per week, or a yearly total of \$4,084. Therefore, based on Mr. Cowel's testimony, the Appeals Board finds Mr. Cowel's reasonable estimate for his gross annual payroll for the 1999 calendar year would amount to only \$5,404 instead of the threshold amount of more than \$20,000.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's November 2, 1999, preliminary hearing Order should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

²See K.S.A. 1998 Supp. 44-505(a)(3).

Dated this ____ day of December 1999.

BOARD MEMBER

c: Jeffrey T. Tevis, Wichita, KS
 E. L. Lee Kinch, Wichita, KS
 Courtney J. Cowel, Sedan, KS
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Director